

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

QUEENA R. BASS	:	CIVIL ACTION
	:	
v.	:	
	:	
THOMAS JEFFERSON UNIVERSITY	:	
HOSPITAL	:	No. 97-5742

O R D E R - M E M O R A N D U M

AND NOW, this 10th day of September, 1998, defendant Thomas Jefferson University Hospital's motion for assessment of attorney's fees against pro se plaintiff Queena R. Bass is denied.

Title VII of the Civil Rights Act of 1964 provides that in any action under Subchapter Six, "the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee" 42 U.S.C. § 2000e-5(k). In Christiansburg Garment Co. V. EEOC, 434 U.S. 412, 415-22, 98 S. Ct. 694, 697-701, 54 L. Ed. 2d 648 (1978), the Supreme Court construed the attorney fees statute differently for prevailing plaintiffs and prevailing defendants.

In Christiansburg, the Court recognized that while a liberal fees standard should be used for those parties whose suits Congress wished to encourage, and who needed this encouragement to bring the suits, a stricter standard was appropriate for defendants, who needed no encouragement to defend suits against them and who were not vindicating an important public policy.

Dorn's Transp., Inc. v. Teamsters Pension Trust Fund, 799 F.2d 45, 49 (3d Cir. 1986).

Christiansburg delineated the stricter standard for prevailing defendants:

[A] district court may in its discretion award attorney's fees to a prevailing defendant in a Title VII case upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith.

In applying these criteria, it is important that a district court resist the understandable temptation to engage in post hoc reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation.

Christiansburg, 434 U.S. at 422, 98 S. Ct. at 700. As to frivolousness:

[C]ases where findings of "frivolity" have been sustained typically have been decided in the defendant's favor on a motion for summary judgment or a . . . motion for involuntary dismissal. In these cases, the plaintiffs did not introduce any evidence to support their claims. [On the other hand, i]n cases where the plaintiffs introduced evidence sufficient to support their claims, findings of frivolity typically do not stand.

EEOC v. L.B. Foster Co., 123 F.3d 746, 751 (3d Cir. 1997) (quoting Sullivan v. Sch. Bd., 773 F.2d 1182, 1189 (11th Cir. 1985) (citations omitted)); cert. denied, 118 S. Ct. 1163; 140 L. Ed. 2d. 174 (1998).

Plaintiff's claim, although ultimately unpersuasive to the jury, was not frivolous, unreasonable, or without foundation. Jefferson does not contend that Bass litigated in bad faith, Application for attorney fees, ¶ 8, and contrary to Jefferson's

position, plaintiff had some foundation for her claim.¹ On August 5, 1998 defendant's motion for summary judgment was denied. See L.B. Foster, 123 F.3d at 751 ("In determining if an award of counsel fees to a Title VII defendant is appropriate, courts should consider . . . whether the trial court dismissed the case prior to trial or held a full-blown trial on the merits."). To find at this point that plaintiff's lawsuit was devoid of merit would contravene the Court's admonition against post hoc reasoning.

Edmund V. Ludwig, J.

¹ Plaintiff argued that she was the only African-American administrative assistant discharged from her departmental group and that the reason given for her discharge (downsizing) was pretextual. She testified that she had a phobia as to lab specimens that was well known in the hospital and that her refusal to type lab reports was the true reason for her discharge.